DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND
WASHINGTON, D.C. 20362

IN REPLY REFER TO
NAVSEAINST 7030.3A
00L/WL
Ser 795
18 January 1984

NAVSEA INSTRUCTION 7030.3A

From: Commander, Naval Sea Systems Command

Subj: Work for Non-Navy Organizations

Ref: (a) Navy Regulations, Article 0749
(b) NAVMATINST 7030.8, of 23 Jun 1981, Subject: Work for Non-Navy Organizations
(c) NAVMATINST 7030.7A, of 9 Oct 1978, Subject: Work for Other Government Departments or Private Parties
(d) OPNAVINST 7030.2, of 27 Sep 1973, Subject: Interagency Support Between the Navy and the Central Intelligence Agency
(e) SECNAVINST 5300.23A, of 17 Oct 1977, Subject: Department of the Navy Personnel Assigned to Duty Outside the Department of Defense and Supporting Non-DoD Activities
(f) NAVCOMPT Manual, Vol. III, Art. 035881
(g) NAVCOMPT Manual, Volume 5
(h) Navy Industrial Fund Handbook

Encl: (1) Sample Indemnity Agreements

1. Purpose. To provide current instructions and guidance under which NAVSEA shore activities may perform work or provide supplies, services or facilities to other DoD departments and agencies, other departments of the Federal Government, state and local governments, foreign governments, armed forces exchange activities, welfare and recreation groups sponsored by any of the U.S. Armed Forces, or private parties, as provided in reference (a) and implemented within the Naval Material Command by reference (b).

2. Cancellation. NAVSEAINST 7030.3, dated 14 April 1977.

3. Scope and Applicability.

a. Provisions of this instruction are applicable to all Shore Activities under the command of COMNAVSEA, with the exception of the Naval Explosive Ordnance Disposal Facility, Indian Head, Maryland, and the Naval Ordnance Missile Test Facility, White Sands, New Mexico. (The provisions of reference (c) apply to these activities.)

b. This instruction is intended to apply basically to the legal aspects of the provision of work by NAVSEA activities for non-Navy organizations, and not to the technical requirements of such work. For purposes of this instruction, work for the Marine Corps is considered to be work for a Navy organization.

4. Background. The Economy Act of 30 June 1932, as amended (31 U.S.C. §686), provides that any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and it is determined by the head of such agency to be in the best interests of the Government to do so, may place orders with any other such department or agency for materials, supplies, equipment, work or services of any kind that the requisitioned Federal Agency may be in a position to supply or equipped to render. The Act further provides that if such work or services can be as conveniently or more cheaply performed by private agencies such work shall be let by competitive bids to such private agencies.

5. Policy. The Naval Sea Systems Command will perform work or services for foreign governments when authorized by the Secretary of the Navy, and for private parties when (i) it is determined to be in the interests of the Navy to do so; and (ii) it is determined that performance of the work will not place the Government in competition with private industry. Additionally, because the country's private shipbuilding and repair industry is vital to the national security, due regard for its continued operation must be given in connection with the contemplated performance of shipwork for organizations described in paragraph 1.

6. Authority. NAVSEA shore activities are authorized to perform work or provide supplies, services, or facilities to organizations described in paragraph 1, pursuant to the provisions of references (a) and (b), provided that the following criteria are satisfied:

a. General Criteria. Work may be undertaken for non-Navy organizations when:

(1) Costs of the contemplated work do not exceed limitations approved or specified by the Secretary of the Navy;

(2) The work to be accomplished and funds to be transferred are specified in a formal document;

(3) The work to be performed is within the activity's assigned mission, and it is determined that the contemplated work will not impede the accomplishment of said mission; and

(4) Personnel required to accomplish the contemplated work must be provided from the civilian ceiling or military authorization assigned to the activity, except in connection with work for foreign governments where special (Foreign Military Sales) ceiling arrangements may be available.

b. Specific Criteria.

(1) Other Federal agencies and state and local governments. Work may be undertaken for other Federal departments or agencies, and state or local governments, provided that:

(a) A documented determination is made by the requesting organization, in collaboration with the performing activity, that performance of the contemplated work will not place a government agency in direct competition with the private sector.

(b) A support agreement is prepared by the performing activity delineating specific work to be performed and incorporating by reference or attachment applicable memoranda of understanding (MOUs) or letters of memorandum or agreement (LOM/As).

(c) Statutory authority (i.e., the Economy Act (31 U.S.C. §686) or other applicable law) is clearly established and cited as authority for provision of the contemplated supplies, services or facilities. The Economy Act may not be used as authority to procure by contract supplies or services for Federal civilian departments or agencies other than the Treasury Department, the Federal Aviation Administration, or the Maritime Commission.

(2) Domestic Private Parties. Work for domestic private parties may be undertaken on an exception basis when:

(a) It is in the interest of the Government to do so, and there is no issue of competition with private industry. The performing activity shall make a written determination that the required resources (personnel and facilities) are not available in the private sector.

(b) Work may be performed for U.S. contractors in support of weapons systems sales or transfers to a foreign buyer when such sale or transfer is on a government-to-government basis (e.g., Foreign Military Sales (FMS) case or Grant Aid Program). Work may not be performed for U.S. contractors for commercial (direct) sales to foreign customers unless authorized pursuant to Section 30 of the Arms Export Control Act, as amended (22 U.S.C. §2270).

(c) If the existence of a government-to-government agreement or its applicability to a specific work request is in question, such requests should be referred to the Chief of Naval Operations (Security Assistance Division (OP-63)) via the chain of command.

(3) Foreign Customers. Work may be performed for a foreign government or foreign private party when:

(a) The transaction is in the form of an FMS case or is in support of a Grant Aid or International Agreement executed by the U.S. Government and the foreign government; or

(b) In the case of a foreign private party, there is a government-to-government agreement designating the foreign private party as agent for receipt of the work.

(c) Requests received from foreign governments or foreign private parties should be referred to the Chief of Naval Operations (Security Assistance Division (OP-63)) via the chain of command.

(4) Armed Forces Sponsored Activities. Supplies, services or facilities may be provided to armed forces sponsored exchange, welfare or recreation groups, including messes, employee associations and similar organizations when:

(a) The activity performing the work directly benefits thereby, and

(b) Such supplies, services or facilities cannot be obtained conveniently or more cheaply from the private sector.

7. General Guidance.

a. Before accepting any work or providing any supplies, facilities or services to any non-DoD organization, the requisitioning organization shall be informed that:

(1) Unsolicited offers, proposals or quotations, as such, cannot be initiated by the Government (since there can be no element of competition with private industry with respect to provisions of the contemplated supplies, services or facilities);

(2) Estimates of cost can be furnished upon request; and

(3) No promise or guarantee can be given as to time of completion.

b. In every agreement undertaken to perform work for private parties who are prime contractors for the Government, a clause shall be inserted providing that any supplies being furnished by the performing activity shall not be deemed to be Government-furnished material or Government-furnished property within the meaning of any Government procurement contract, and the Government does not warrant the suitability of such work for any particular purpose.

c. An indemnity agreement, similar to that set forth in enclosure (1) hereto, will be executed prior to work being undertaken (except as noted below) whenever the activity commanding officer determines, in consultation with the nearest available General Counsel office, that such an agreement is warranted for the protection of the Government. Consistent with protecting the Government's interests, the enclosure (1) sample agreement may be modified as necessary to fit particular circumstances. The indemnity agreement shall be signed by a duly authorized representative of the organization, company, or individual requesting the supplies, services or facilities; or such other interested party as the activity shall determine to be proper under the circumstances. Indemnity agreements are not required for:

(1) Agencies of the Federal Government and morale, welfare and recreation organizations;

(2) Government contractors and subcontractors:

(a) Who will charge such contemplated work and any attendant insurance expense to a specific Government cost type contract; or

(b) Where the contemplated work is clearly required for the performance of a specific Government contract; or

(3) Foreign governments, where the contemplated work is to be performed pursuant to sales made to such governments under the Arms Export Control Act (22 U.S.C. §2751, et. seq.).

d. Normally, an indemnity bond will not be required. However, when the performing activity considers that such a bond is warranted as additional security to cover a risk in relationship to the apparent financial responsibility of the requisitioning activity, the performing activity shall so inform the cognizant NAVSEA Headquarters Activity. The Headquarters activity, after consultation with the NAVSEA Office of Counsel (SEA 00L) will provide advice concerning the type and extent of any additional protection to be obtained under the existing circumstances.

8. Approval Authority. Subject to the work acceptance policy and approval requirements of NAVSEA Headquarters, work may be undertaken for non-Navy organizations with the approval of the activity commanding officer (this authority shall not be redelegated), except as follows:

a. Work will not be undertaken for non-defense components or agencies which requires the furnishing activity to assume the role of "lead" or "principal development activity," i.e., undertake the management and technical responsibility for the prosecution of the effort, without the prior review and approval of NAVSEA headquarters.

b. Any work considered controversial or sensitive from either a policy or political viewpoint will be reviewed and approved by NAVSEA headquarters prior to execution by the performance activity. NAVSEA headquarters will, in turn, keep the Chief of Naval Material informed of action being taken in regard to such work as appropriate.

c. Activity commanding officers shall not approve requests for support from the Central Intelligence Agency or its constituent components without the prior approval of the request by the Chief of Naval Operations, Assistant for Interagency Coordination, as required by reference (d).

d. All requests by the White House, the Congress, the Office of the Secretary of Defense, and other sources within and outside the Navy or Marine Corps for the detail of personnel, military and civilian, will be received or referred to the Under Secretary of the Navy, via the chain of command.

e. Requests for work, of whatever form, to support non-DoD organizations which require the assignment of civilian or military personnel on a temporary or permanent basis outside the activity will be submitted for approval to the Special Assistant to the Secretary and Deputy Secretary of Defense via the chain of command. This includes any changes to such existing support agreements. Categories of personnel not governed by the requirement are defined in reference (e).

f. Activities will not be used for the storage or the disposal of non-DoD owned toxic or hazardous materials. Requests for exceptions will be forwarded to the Special Assistant to the Secretary of Defense via the chain of command.

g. Requests from a representative of a foreign government or organization to initiate the negotiation of an international agreement shall be referred to the Chief of Naval Operations, Director for Political-Military Policy and Current Plans, via the chain of command.

9. Furnishing Facilities. Government facilities may be furnished in accordance with the provisions of reference (f).

10. Charges. Charges for work performed at modified and non-industrial funded activities shall be in accordance with reference (g) and in accordance with reference (h) when performed at industrial fund activities. Work for private parties shall not be undertaken on a fixed or firm price but only on a cost-reimbursement basis, since any underestimate of costs on a firm price basis would subject the performing activity to deficiencies which would have to be made up from appropriated funds or otherwise. Activities utilizing stabilized rates shall charge for services provided on the basis of such rates, except for work performed for exempted activities including (where applicable) state and local governments and foreign governments.

11. Emergencies. This instruction shall not be construed to prevent prompt action in the case of emergencies involving possible loss of life or valuable property. In such cases, as specified by subparagraph 4 of reference (a), a detailed account of pertinent facts and circumstances shall be made promptly to the Commander, Naval Sea Systems Command.

12. Declining Work. Activities shall advise the Commander, Naval Sea Systems Command by letter of the reasons for declining to perform any work requisitioned by organizations described in paragraph 1.

J.H. WEBBER
Vice Commander

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Sample Indemnity Agreement

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned ____(Name of Corporation)____, a corporation organized and existing under the laws of the State of _____, in consideration of __(describe work, services, or facilities to be provided)__ at ____(Name and Location of Shipyard)____ and as a condition precedent thereto, does hereby expressly agree to indemnify and hold harmless the United States Government (hereinafter "the Government"), its agencies and instrumentalities against all suits, actions, claims, demands, or costs of any kind (except to the extent that such suits, actions, claims, demands, or costs are based on or result from the negligence of the Government, its agencies or instrumentalities) to which the Government, its agencies and instrumentalities may be subject by reason of damage or injury (including death) to the property or person of anyone, whomsoever they may be, arising or resulting at any time or place from any operations hereafter performed either by the Shipyard or by the undersigned, its agents, employees or subcontractors in ___(describe work, services, or facilities to be provided)___ [and in connection with the entering, leaving, docking, or other movement of said ship within, into, or out of the Shipyard, regardless of whether the ship is within or under the Shipyard's direction or control or the direction or control of the undersigned, its agents, employees, or subcontractors.] [Note: The foregoing language in brackets should not be included if the services, etc. being provided do not involve a ship. If the language is included, the brackets should be removed.]

The undersigned hereby waives any and all claims which, but for this waiver, it may have, or which it may hereafter acquire, against the Government, arising out of the operations above described.

IN WITNESS WHEREOF, this agreement has been duly executed this _____ day of _____, 19__.

_____(Name of Corporation)_____

By (Name of authorized Corporate Official)

CERTIFICATE

I, _____, certify that I am the Secretary of the corporation executing this agreement; that _____ who signed this agreement on behalf of said corporation was then (Title of Authorized Official) thereof; that the seal affixed to this agreement is the corporate seal of said corporation, and that said agreement was duly signed for and in behalf of the said corporation and said corporate seal was affixed thereto by authority of its governing body.

(Corporate Seal)

_____
Secretary

_____
Date

Enclosure (1)
Sample 1 (Shipyards)

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned _____(Name of Corporation)_____, a corporation existing under the laws of the State of _____, in consideration of ____(describe work, services or facilities provided)____ at ___(name and location of NAVSEA activity)_____ and as a condition precedent thereto, does hereby expressly agree to indemnify and hold harmless the United States Government (hereinafter "the Government"), its agencies and instrumentalities against all suits, actions, claims, demands, or costs of any kind (except to the extent that such suits, actions, claims, demands, or costs are based on or result from the negligence of the Government, its agencies or instrumentalities) to which the Government, its agencies and instrumentalities may be subject by reason of damage or injury (including death) to the property or person of anyone, whomsoever they may be, arising or resulting at any time or place from any operations hereafter performed either by the _____(NAVSEA Activity)_____ or by the undersigned, its agents, employees or subcontractors in ____(describe work, services, or facilities to be provided)____ at _____(NAVSEA Activity)____.

The undersigned hereby waives any and all claims which, but for this waiver, it may have, or which it may hereafter acquire, against the Government, arising out of the operations above described.

IN WITNESS WHEREOF, this agreement has been duly executed this _____ day of _____, 19___.

_____(Name of Corporation)_____

By ___(Name of Authorized Corporate Official)___

CERTIFICATE

I, _____, certify that I am the Secretary of the corporation executing this agreement; that _____ who signed this agreement on behalf of said corporation was then ___(Title of Authorized Official)___ thereof; that the seal affixed to this agreement is

Enclosure (1)
Sample 2 (Other than Shipyards)

the corporate seal of said corporation, and that said agreement was duly signed for and in behalf of the said corporation and said corporate seal was affixed thereby by authority of its governing body.

(Corporate Seal)

_____
Secretary

_____
Date

Enclosure (1)
Sample 2 (Other than Shipyards)